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11 Attorneys for Plaintiffs
12 NICHOLAS SELBE, DANIEL GHYCZY,
MAKAELA O'CONNELL, and ANNIYA LOUIS,
on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19 NICHOLAS SELBE, DANIEL GHYCZY,
MAKAELO O'CONNELL, and ANNIYA
20 LOUIS on behalf of themselves and others
similarly situated.

Plaintiffs.

Case No. 3:14-cv-3238-MMC

**PLAINTIFFS' NOTICE AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS AND COLLECTIVE ACTION
SETTLEMENT**

Date: April 29, 2016
Time: 9:00 a.m.
Judge: Hon. Maxine M. Chesney
Location: Courtroom 7

Complaint filed: July 17, 2014
Trial date: Not set

1 **PLEASE TAKE NOTICE THAT**, on April 29, 2016 at 9:00 a.m., or as soon thereafter
 2 as counsel may be heard, Plaintiffs Nicholas Selbe, Daniel Ghyczy, Makaela O'Connell, and
 3 Anniya Louis, on behalf of themselves and others similarly situated, by and through counsel, will
 4 move and hereby do move the Court for an Order granting final approval of the Class and
 5 Collective Action settlement in this matter including:

6 1. Granting final approval of the parties' proposed Stipulated Settlement Agreement
 7 of Class Action Claims (the "Settlement"), filed November 20, 2015 (ECF No. 103-1), with
 8 certain modifications as set forth in the Order Regarding Motion for Preliminary Approval of
 9 Class and Collective Action Settlement (ECF No. 108) (the "Preliminary Approval Order"), as
 10 fair and reasonable.

11 2. Granting final certification of the following Class and Collective Action for
 12 settlement purposes only pursuant to Federal Rules of Civil Procedure 23 and 29 U.S.C. § 216(b):

13 All persons who have submitted a "Consent to Join Collective Action" in the
 14 instant Lawsuit prior to June 1, 2015 and all individuals employed in the State of
 15 California between January 1, 2011 and August 1, 2014 who were employed in
 16 any of the following "Covered Positions": All Star; Community Advisor;
 17 Community Assistant; Leasing All-Star; Work for Rent Leasing AllStar; or any
 18 combination thereof (collectively, the "Class Members").

19 3. Granting final confirmation of the appointment of Plaintiffs' attorneys, Joshua M.
 20 David of David, Kamp & Frank, L.L.C. and Eric B. Kingsley of Kingsley & Kingsley, APC as
 21 Class Counsel.

22 4. Granting final confirmation of the appointment of Nicholas Selbe, Daniel Ghyczy,
 23 Makaela O'Connell, and Anniya Louis as Class Representatives.

24 5. Granting final confirmation of Simpluris as the Settlement Administrator.

25 This Motion is supported by the Memorandum of Points and Authorities filed herewith as
 26 well as the other records, pleadings, and papers filed in this action, and any evidence or argument
 27 presented at the hearing on this Motion. This Motion is made pursuant to the Preliminary
 28 Approval Order as well as pursuant to the Court-approved Class Settlement Notices that the
 Settlement Administrator delivered to the Class Members.

Plaintiffs and Class Counsel filed a separate Motion for Award of Attorneys' Fees,

1 Litigation Costs, and Enhancement Awards (ECF No. 110), which is noticed for hearing at the
2 same time at this Motion.

3 A proposed Order is attached hereto as Exhibit 1.

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6 KINGSLEY & KINGSLEY

7 Dated: April 8, 2016

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/s/ Eric B. Kingsley

ERIC B. KINGSLEY

LIANE KATZENSTEIN LY

Attorneys for Plaintiffs

NICHOLAS SELBE, DANIEL GHYCZY,
MAKAELO O'CONNELL, AND ANNIYA
LOUIS

12

Dated: April 8, 2016

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/s/ Joshua M. David

JOSHUA M. DAVID

NICHOLAS A. NUNES

Attorneys for Plaintiffs

NICHOLAS SELBE, DANIEL GHYCZY,
MAKAELO O'CONNELL, AND ANNIYA
LOUIS

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I, Joshua M. David, am the ECF User whose identification and password are being used to
file this Notice of Motion and Unopposed Motion for Preliminary Approval of Settlement. In
compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concurred in and
authorized this filing.

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Exhibit 1

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21 MAKAELO O'CONNELL, and ANNIYA LOUIS,
22 on behalf of themselves and all others similarly
23 situated

24 *Counsel Continued on Next Page*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 NICHOLAS SELBE, DANIEL
2 GHYCZY, MAKAELO
3 O'CONNELL, and ANNIYA
4 LOUIS on behalf of themselves and
5 others similarly situated,

6 Plaintiffs,

7 v.

8 PEAK CAMPUS MANAGEMENT,
9 LLC,

10 Defendant.

11 Case No. 3:14-cv-3238-MMC

12 [PROPOSED] ORDER GRANTING:
13 (1) MOTION FOR FINAL APPROVAL
14 OF CLASS AND COLLECTIVE
15 ACTION SETTLEMENT; AND
16 (2) PLAINTIFFS' AND CLASS
17 COUNSEL'S MOTION FOR AWARD
18 OF ATTORNEYS' FEES, LITIGATION
19 COSTS, AND ENHANCEMENT
20 AWARDS

1
2 *Continued From Previous Page:*

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19 Attorneys for Defendant
20 PEAK CAMPUS MANAGEMENT, LLC

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27
28 ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS AND COLLECTIVE
ACTION SETTLEMENT

Case No. 3:14-cv-3238-MMC

ORDER

Plaintiff's unopposed Motion for Final Approval of Class and Collective Action Settlement and Plaintiffs' and Class Counsel's Motion for Award of Attorneys' Fees, Litigation Costs, and Enhancement Awards (the "Motions") came on regularly for hearing on April 29, 2016, at 9:00 a.m., in the United States District Court for the Northern District of California, the Honorable Maxine M. Chesney presiding. All parties were represented by counsel.

Having considered the memoranda and declarations, oral arguments of counsel, and the relevant statutory and case law, the Court GRANTS Plaintiff's and Class Counsels' Motions and orders and finds as follows:

1. The Court FINDS that no member of the Rule 23 class or the FLSA collective action has objected to the settlement.

2. The Court FINDS that the settlement is fair and reasonable, and, therefore, the Motion for Final Approval of Class and Collective Action Settlement is **GRANTED**.

2. The Parties' proposed Stipulated Settlement Agreement of Class Action Claims (the "Settlement"), which the Court preliminarily approved with certain modifications as set forth in the Order Regarding Motion for Preliminary Approval of Class and Collective Action Settlement (ECF No. 108), is APPROVED as so modified.

3. The following Class and Collective Action is finally certified for settlement purposes only pursuant to Federal Rules of Civil Procedure 23 and 29 U.S.C. § 216(b):

All persons who have submitted a “Consent to Join Collective Action” in the instant Lawsuit prior to June 1, 2015 (“Opt-In Class Members”) and all individuals employed in the State of California between January 1, 2011 and August 1, 2014 who were employed in any of the following “Covered Positions”: All Star; Community Advisor;

Community Assistant; Leasing All-Star; Work for Rent Leasing All-Star; or any combination thereof (“California Class Members”) (collectively, “Class Members”).

4. The appointment of Plaintiffs' attorneys, Joshua M. David of David, Kamp & Frank, L.L.C. and Eric B. Kingsley of Kingsley & Kingsley, APC as Class Counsel is confirmed.

5. The appointment of Nicholas Selbe, Daniel Ghyczy, Makaela O'Connell, and Anniya Louis as Class Representatives is confirmed.

6. The appointment of Simpluris as the Settlement Administrator is confirmed.

7. Under Federal Rules of Civil Procedure 23(h) and 54(d) and Section 216 of the FLSA, 29 U.S.C. § 216(b), Plaintiffs and Class Counsel have moved for an award of attorneys' fees, enhancement awards, and litigation costs.

8. This class action and collective action settlement resolves a wage-and-hour dispute on a class-wide basis.

9. The Court's December 30, 2015 Order granted preliminary approval of the Settlement, pursuant to which Plaintiffs and Class Counsel requested payment from the Settlement Amount of attorneys' fees of thirty percent (30%) of the Settlement Amount, equating to \$240,000.00, litigation costs of \$24,473.43, and enhancement awards for the Class Representatives totaling \$24,000.00 to be allocated \$8,000.00, \$8,000.00, \$4,000.00, and \$4,000.00, respectively.

10. Rule 23(h) provides that, “[i]n a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by . . . the parties’ agreement.” The Rule further provides that “[a] claim for an award must be made by motion under Rule 54(d)(2),” notice of which must be “directed to class members in a reasonable manner” and that the Court “must find the facts and state its legal conclusions under Rule 52(a).” Fed. R. Civ. P. 23(h)(1) & (3). In turn,

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2 Rule 54(d)(2) requires a claim for fees to be made by motion, and specifies its timing
3 and content, including, in relevant part, “the grounds entitling the movant to the
4 award” and “the amount sought.” Fed. R. Civ. P. 54(d)(2)(B).

5 11. All Class Members were advised of Class Counsel’s request for an award
6 of fees and costs in the Court-approved Class Settlement Notices. As directed by the
7 Court, on February 9, 2016, Plaintiffs and Class Counsel filed a separate Motion for
8 Award of Attorneys’ Fees, Litigation Costs, and Enhancement Awards (ECF No.
9 110). In the Class Settlement Notices, all Class Members were advised how to obtain
10 a copy of the Motion either from PACER or the Settlement Administrator’s website
11 where the Motion is readily available.

12 12. When “the settlement produces a common fund for the benefit of the
13 entire class, courts have discretion to employ either the lodestar method or the
14 percentage-of-recovery method” of calculating attorneys’ fees awards. *In Re Bluetooth*
15 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

16 13. Under the percentage-of-the-fund method, it is appropriate to base the
17 percentage calculation on the gross settlement amount. *See generally Boeing v.*
18 *Gemert*, 444 U.S. 472, 479 (1980); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d
19 1026, 1027 (9th Cir. 1997).

20 14. The Court adopts the percentage-of-the-fund approach here and finds that
21 the attorneys’ fees and litigation costs requested are reasonable. The fee award of
22 thirty percent (30%) of the fund is within the range of reasonable percentage fee
23 awards in this Circuit. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d
24 1301, 1311 (9th Cir. 1990) (stating that the Ninth Circuit has historically considered
25 twenty-five percent of the common fund a “benchmark” figure for attorneys’ fee
26 awards); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at *17, 2009
27 WL 248367 (N.D. Cal. 2009) (stating the exact percentage varies depending on the
28 facts of the case, and in “most common fund cases, the award exceeds that

1
2 benchmark."); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir.
3 1989) ("Ordinarily, however, such fee awards range from 20 percent to 30 percent of
4 the fund created.").

5 15. A *Lodestar* cross-check reveals that the attorneys' fees requested, 30% of
6 the common fund amount, equating to \$240,000.00 is substantially less than the
7 *Lodestar* amount of \$449,195.00. The Court finds that Class Counsel's hours and
8 hourly rates are reasonable, thus, the requested fee award results in a "negative
9 multiplier" and the *Lodestar* cross-check supports a finding that the requested
10 percentage of the fund, 30%, is both fair and reasonable.

11 16. Litigation costs are routinely awarded in addition to attorneys' fees. *See*
12 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Odrick v. UnionBanCal Corp.*,
13 2012 U.S. Dist. LEXIS 171413, at *17, 2012 WL 6019495 (N.D. Cal. Dec. 3, 2012);
14 *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at *20 (N.D. Cal. Feb.
15 2, 2009). Class Counsel have advanced all costs incurred in this case and request
16 reimbursement from the common settlement fund in the total amount of \$24,473.43,
17 including \$23,223.43 in costs incurred and \$1,250 in anticipated costs. Class Counsel
18 has provided a detailed itemization of these costs, and the Court FINDS that these
19 costs are reasonable.

20 17. The Court has the discretion to award enhancement awards, or incentive
21 fees, to named class representatives in a class action suit. *Van Vranken v. Atl.*
22 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995). The Court FINDS that
23 enhancement awards to the Class Representatives in this case are justified.

24 18. Accordingly, Plaintiffs' and Class Counsel's Motion for Award of
25 Attorneys' Fees, Litigation Costs, and Enhancement Awards is GRANTED. Class
26 Counsel is awarded a fee of thirty percent (30%) of the Settlement Amount, equating
27 to \$240,000.00, and litigation costs of \$24,473.43. The Class Representatives are
28 awarded total Enhancement Awards of \$24,000.00, to be allocated \$8,000.00 each to

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2 Nicholas Selbe and Daniel Ghyczy and \$4,000.00 each to Makaela O'Connell and
3 Anniya Louis.

4 19. The Settlement Administrator shall distribute the Settlement Amount to
5 the Class Members, Class Counsel, the Class Representatives, and the LWDA as
6 specified in the Settlement Agreement and this Order.

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8 **IT IS SO ORDERED.**

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10 Dated: _____, 2016

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MAXINE M. CHESNEY
13 United States District Judge
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